

DEC 18 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

LIDYA MEKONNEN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-71581

Agency No. A96-345-915

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Lidya Mekonnen, a native and citizen of Ethiopia, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") denial of her application for asylum, withholding of removal, and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

protection under the Convention Against Torture (“CAT”). To the extent we have jurisdiction, we have jurisdiction pursuant to 8 U.S.C. § 1252. Where, as here, the BIA adopts the decision of the IJ, we review the IJ’s decision as if it were that of the BIA. *See Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005) (en banc). We dismiss the petition in part, and deny the petition in part.

We lack jurisdiction to review the IJ’s and the BIA’s findings on Mekonnen’s untimely asylum application because it was based on disputed facts. *See* 8 U.S.C. § 1158(a)(3). Accordingly, we dismiss the petition as to Mekonnen’s asylum claim.

As to Mekonnen’s withholding of removal claim, substantial evidence supports the IJ’s adverse credibility finding. Mekonnen’s omission from her asylum application of the physical abuses that she suffered during her detention and her mother’s arrest goes to the heart of her claim. *See Li v. Ashcroft*, 378 F.3d 959, 963 (9th Cir. 2004). Accordingly, we deny the petition as to her withholding claim.

Because Mekonnen’s claim under the CAT is based on the same facts that the IJ found to be not credible, and Mekonnen points to no other evidence that the IJ should have considered, she has failed to establish eligibility for relief under the CAT. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

We also deny, as belied by the record, Mekonnen's due process contention that the BIA summarily dismissed her appeal without notice. The BIA reviewed the IJ's decision, and adopted and affirmed it.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.